

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

VENISE THERESA GONYA, as representative	)	
of the Estate of Joseph E. Gonya, deceased	)	
individually and on behalf of all others similarly	)	
situated,; ROXANNE S. SCAIFE, as	)	
representative of the Estate of Arnold L. Stone,	)	
deceased, individually and on behalf of all others	)	
similarly situated,	)	CIVIL ACTION NO. C-04-221-M
	)	
	)	
Plaintiffs,	)	ASSENTED TO
	)	MOTION TO STAY
vs.	)	
	)	
ROGER A. SEVIGNY, Commissioner of the	)	[CLASS ACTION]
State of New Hampshire Insurance Department,	)	
in his official capacity as Insurance Commissioner	)	
and liquidator of The Home Insurance Company;	)	
PETER W. HEED, Attorney General of New	)	
Hampshire, in his official capacity,	)	
	)	
Defendants.	)	
	)	

NOW COME Venise Theresa Gonya and Roxane S. Scaife, Plaintiffs in the above-entitled matter, by and through their attorneys, Watson & Lemire, P.A. and respectfully request that this Court stay these proceedings pending a decision to be issued by the Merrimack County Superior Court in the related matter of Gonya, et al. v. Sevigny, et al., Docket No. 04-E-0208. In support of this motion, the plaintiffs state as follows:

1. The Plaintiffs commenced this action challenging the constitutionality of RSA 402-C:40(I) under the United States Constitution. Plaintiffs simultaneously filed a similar action, by way of a Petition in Equity for Permanent and Temporary Injunctive Relief in the Merrimack County Superior Court, challenging the constitutionality of the statute under the New Hampshire Constitution.

2. A temporary hearing was scheduled to be held in the Superior Court action on July 27, 2004 at 9:00 a.m. At that time, counsel for Plaintiffs and representatives of the Attorney General's office and Insurance Commissioner met and entered into an agreement.

3. The Agreement was presented to and approved by Hon. Kathleen A. McGuire on July 27, 2004. The Agreement provides, in pertinent part, that the parties shall file an agreed-upon stipulation of facts on or before September 15, 2004, and shall file cross-motions for summary judgment on or before October 15, 2004. Responses to the summary judgment motions shall be filed on or before November 1, 2004. The Superior Court has scheduled an oral argument on the motions for summary judgment for November 5, 2004 at 9:00 a.m.

4. In the interim, the within case has been scheduled for an evidentiary hearing on plaintiff's Motion for Preliminary Injunction on August 10, 2004.

5. The parties are desirous of continuing the August 10, 2004 hearing and staying the within action pending a decision in the Superior Court action.

6. Plaintiffs anticipate that they may seek to amend their complaint to join additional plaintiffs in this action, and ask that any stay ordered herein exclude any such motions.

MEMO STATEMENT, LR 7.1(a)(2)

7. No memorandum is necessary with respect to the filing of this motion, as all pertinent information is contained herein.

CONCURRENCE STATEMENT, LR 7.1(c)

8. Defendants' counsel, Daniel J. Mullen, Esq., Associate Attorney General, has been apprised of this motion and has indicated his assent to the granting of the relief sought herein.

WHEREFORE, the plaintiffs respectfully pray that this Court:

A. Stay these proceedings pending a decision of the Merrimack County Superior Court in the matter of Gonya, et al. v. Sevigny, et al., Docket No. 04-E-0208, with the exception of any motion to amend the complaint filed by plaintiffs to join additional plaintiffs;

B. As a result, stay the hearing on plaintiffs' motion for preliminary injunction that is scheduled to be heard by Magistrate Judge Muirhead on August 10, 2004 at 9:30 a.m.; and

C. Grant such other and further relief as the Court may deem just.

Dated: August 3, 2004

Respectfully submitted,  
Venice Theresa Gonya and  
Roxanne S. Scaife, Plaintiffs  
By their attorneys  
WATSON & LEMIRE, P.A.

By: /s/ Thomas R. Watson

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Stay was on this date served on Daniel J. Mullen, Esquire, Associate Attorney General, counsel for Defendants, by Electronic Case Filing.

Dated: August 3, 2004

/s/ Thomas R. Watson  
Thomas R. Watson, Esq.